Angotti Healthcare Systems, Inc. d/b/a St. Joseph Ambulance Service *and* International Association of EMTs and Paramedics, SEIU–NAGE.[1]
Cases 20–CA–32436 and 20–RC–18009

May 8, 2006

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS LIEBMAN, KIRSANOW, AND WALSH

On December 29, 2005, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions,[3] to adopt the recommended Order as modified,[4] and to issue a certification of representative.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Angotti Healthcare Systems, Inc. d/b/a St. Joseph Ambulance Service, San Rafael, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Within 14 days after service by the Region, post at its facility in San Rafael, California copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 11, 2005."

2. Substitute the attached notice for that of the administrative law judge.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Association of EMTs and Paramedics, SEIU–NAGE, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time EMTs and Paramedics employed by the Employer at its facility located at 1418 Lincoln Avenue, San Rafael, California; excluding all managers, clerical and office personnel, guards, and supervisors as defined in the Act.

Dated, Washington, D.C. May 8, 2006

Wilma B. Liebman, Member

Peter N. Kirsanow, Member

[1] We have amended the caption and notice to reflect the disaffiliation of the SEIU from the AFL–CIO effective July 29, 2005.

[2] The Respondent excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We find no merit in the Respondent's argument in its exceptions that the judge placed the burden of proof on it to establish the eligibility of voters whom the Union had challenged. In sustaining the challenges to the ballots of Jamie Larripa and Jeffrey Leonard, the judge relied on the testimony of the four witnesses presented by the Union, whom he credited. The judge's determination not to credit the rebuttal testimony of the Respondent's witnesses was legitimately based, in part, on its failure to produce payroll records corroborating the assertions of these witnesses.

The election was conducted pursuant to a Stipulated Election Agreement. No party excepted, however, to the judge's failure to apply *Caesar's Tahoe*, 337 NLRB 1096 (2002), in analyzing the ballot challenges.

In the absence of exceptions, we adopt pro forma the judge's findings sustaining the challenges to the ballots of Norma DelaFuente and Isis Laland.

[4] We shall modify the judge's recommended Order to conform to the Board's standard remedial language.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with more onerous working conditions if you select International Association of EMTs and Paramedics, SEIU–NAGE, as your collective-bargaining representative.

WE WILL NOT interrogate you as to how you intend to vote in the NLRB representation election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

ANGOTTI HEALTHCARE SYSTEMS, INC. D/B/A
ST. JOSEPH AMBULANCE SERVICE

DECISION

STATEMENT OF THE CASE

BURTON LITVACK. Administrative Law Judge. On December 27, 2004, International Association of EMTs and Paramedics, SEIU–NAGE, AFL–CIO (the Union), filed the representation petition, seeking to represent certain employees of Angotti Healthcare Systems, Inc., d/b/a St. Joseph Ambulance Service (the Respondent), in Case 20–RC–18009; on January 11, 2005, the parties entered into a Stipulation Election Agreement, approved by the Regional Director for Region 20 of the National Labor Relations Board (the Board); and, on February 11, 2005, an agent of the Board conducted a representation election among a voting unit of Respondent's full-time and regular part-time EMTs and Paramedics. The tally of ballots for the representation election showed that there were approximately 24 eligible voters; that 11 votes were cast for the Union and 9 votes were cast against the Union; and that 6 votes were challenged.[1] On February 18, 2005, Respondent timely filed objection to the conduct of the election. The unfair labor practice charge in Case 2–CA–32436 was filed by the Union on March 30, 2005, and, after an investigation, on May 31, 2005, the Acting Regional Director for Region 20 of the Board issued a complaint, alleging that Respondent had engaged in, and continues to engage in, unfair labor practices within the meaning of Section 8(a) (1) of the National Labor Relations Act (the Act). Respondent timely filed an answer to the complaint, essentially denying the unfair labor practice allegations. On June 10, 2005, the Acting Regional Director for Region 20 of the Board issued a report on objections and challenged ballots, dismissing Respondent's objections and consolidating four of the challenged ballots[2] for hearing with the aforementioned unfair labor practice allegations. As scheduled, a hearing on these matters was held before me on August 16, 2005, in San Francisco, California. At the hearing, each party was afforded the opportunity to call witnesses in its own behalf, to cross-examine the witnesses of the other parties, to offer into the record all relevant documentary evidence, to argue legal positions orally, and to file a posthearing brief, which document was filed by each of the parties. Accordingly, based upon the entire record, including the posthearing briefs and my observation of the testimonial demeanor of the several witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, maintains an office and principle place of business in San Raphael, California and has been engaged in the business of operating an ambulance service. During the calendar year immediately preceding the issuance of the instant complaint, Respondent purchased and received at its San Raphael, California place of business goods, valued in excess of $50,000, directly from suppliers located outside the State of California. Respondent admits that, at all times material herein, it has been, and is now, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that the Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The instant complaint alleges that Respondent engaged in conduct, violative of Section 8(a) (1) of the Act, on unknown dates during the week of February 11, 2005, by interrogating employees regarding how they intended to vote in the represen-

[1] Three voters, Norma DelaFuente, Isis Laland, and Kendall Williams, whose names were not on the voter eligibility list, were challenged by the Board agent. Respondent challenged the ballot of Jessica Lefebvre on grounds she had resigned her position as an EMT on January 19, 2005, and the Union challenged the ballots of Jamie Larripa and Jeffrey Leonard on grounds that neither was a voting unit employee.

[2] These were the challenged ballots of DelaFuente, Laland, Larripa, and Leonard. The remaining two challenges were sustained by the Acting Regional Director.

tation election and by threatening employees with more onerous working conditions if they selected the Union as their representative for proposes of collective bargaining. Respondent denies that it engaged in the above-described unfair labor practices. With regard to the representation election, the challenges to the ballots of four voters are at issue—two whose names did not appear on the voter eligibility list and two who, the Union alleges, were not voting unit employees.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent, a corporation, operates a fleet of ambulances in Northern California, providing its services primarily in Marin and San Francisco Counties and in the northern portion of San Mateo County, and maintains its principle office and ambulance depot in San Raphael, which is located in Marin County. Richard Angotti is Respondent's owner and is its president and chief operating officer; Frank Lemus is the communications manager for Respondent and oversees its daily operations; and Respondent admits each is a supervisor and its agent within the meaning of the Act. Respondent employs approximately 24 individuals, classified as emergency medical technicians (EMTs) and paramedics,[3] to operate its ambulances. For each work shift, Respondent normally dispatches five or six ambulances, each with a crew comprised of two unit employees—either two EMTs or one EMT and one paramedic,[4] and the choice of an ambulance team for a response depends upon the serious nature of the call.

Christina Ratola, who worked for Respondent for 2-1/2 years as an EMT until she voluntarily quit her employment on or about March 23, 2005, testified with regard to two conversations with Richard Angotti prior to the February 11 representation election. Notwithstanding the allegation in the complaint, she placed the first of these as occurring approximately a month before the election in a storeroom closet, located in the back of Respondent's San Raphael facility. According to Ratola, who admitted being upset with Respondent concerning cutbacks in the number of her work shifts and three written disciplinary letters and a delay in the receipt of her final check,[5] she was in the closet, a small 10 feet by 4 feet area, collecting supplies for her ambulance when Angotti appeared in the doorway—"He came up and just said . . . there's a union going on. And was talking about how we can continue working out our problems as we had in the past. There would be an open door policy as there had [been]. And there was no more flexible schedules if there was a union." Ratola, who averred that she "always felt intimidated by Mr. Angotti," stated that the entire conversation consumed 10 minutes and that she did not reply to A[6]Angotti, who testified that he had been involved in two prior NLRB representation elections and had received advice from counsel as what he could lawfully say to employees during the campaigns, recalled the same incident, stating "I said, good morning Christina, as you know, we are going to have an election coming up, and I started to talk to her, but I got very negative body language. So I didn't pursue any further conversation." He specifically denied saying the company would be less flexible with regard to scheduling if the employees voted for the Union and, during cross-examination, explained that, by Ratola's body language, he meant she never turned to look at him.

With regard to the second of her preelection conversations with Richard Angotti, Ratola testified that it occurred one morning during the week prior to the representation election She recalled that Respondent had scheduled an employee barbeque for later in the day and that she was about to begin her work shift when Angotti approached and said "you're up" and he wanted to speak to her in his office about the Union.[7] After entering Angotti's office, Ratola and the former spoke for "about a half hour to forty-five minutes" about the Union with the office door closed. According to Ratola, Angotti did most of the speaking, mainly about Respondent's competitors, American Medical Response (AMR) and Redwood Empire Life Support (RELS), the latter of which had recently ceased doing business. With regard to AMR, Angotti said that it was a union ambulance company but that "he would never be able to keep . . . . their wages and that he could never be AMR." As to RELS, Angotti said it "had recently gone out of business and [it] had just gone union." Continuing, Angotti said that the prospect of his company becoming a union ambulance service "feels like his eight year old child is

[3] According to Lemus, the difference between EMTs and paramedics is the degree of their training. The former receive "basic life support training" and the latter have received "advanced life support training." Paramedics are dispatched to more "critical type" calls which require possible usage of such life support intervention as intravenous infusion, cardiac drug administration, and advanced airway management.

[4] At least one ambulance team per shift is always comprised of an EMT and a paramedic.

[5] Nevertheless, rather than appearing voluntarily, Ratola testified pursuant to a subpoena.

[6] Angotti testified that, during the preelection period, he made a point of reminding the voting unit employees that Respondent had always been flexible in scheduling work in order to accommodate the requirements of employees who were attending school. In this regard, during the preelection period, dispatcher, Jamie Larripa, distributed a letter to her coworkers in which she exhorted them to "please vote no," emphasizing that Respondent had been very "flexible with all of this staff" in". . . giving people what they want such as ideal school schedules . . . ." Angotti admitted being aware of the existence of the letter prior to its distribution during the preelection period. Also, with regard to the issue of flexible schedules, Paul Corso, who was terminated by Respondent from his EMT position in March 2005, testified that, one morning about 2 or 3 weeks prior to the election, as he and another employee, Alexander Stephenson, were preparing their ambulance for work, Angotti leaned into the back of the vehicle and began speaking to them about their flexible work schedules. According to Corso, who was then enrolled in a paramedic training program, during the course of his comments, Angotti said that, because of his flexibility with schedules, employees were allowed to take tests and do other things and added "…that if we voted for a union . . . he wouldn't be able to be as flexible with students like us." Angotti recalled this conversation and, while conceding that ". . . I brought up the fact that it's nice that we can have employees that can go to school and also work at the same time," he denied saying he wouldn't be as flexible with regard to schedules if a union was selected by the employees.

[7] Ratola, who was aware that other employees had been called into Angotti's office for union-related conversations, recalled she replied, "Lucky me" because she did not want to have a conversation about the Union with Angotti.

being kidnapped from him." Then, according to Ratola, "at the very end of the meeting, he asked me which way I was going to vote, and I told him that I wanted to hear both sides and wasn't sure which way I was voting yet." Angotti likewise recalled this conversation and recalled the subject was the upcoming election. According to him, he told Ratola that, as the owner of the company, he did not feel the employees needed a union to represent them. Angotti added that a union might be good for a large company like AMR, but "we didn't need a union since we were a small company." Continuing, he told Ratola he believed that he and his employees could work things out on their own and that "we didn't need a third party." Angotti, who recalled similar one-on-one conversations with other employees, specifically denied asking which way Ratola was going to vote.

As to the alleged unfair labor practices, counsel for the General Counsel argues that, during the initial conversation, Angotti threatened Ratola with more onerous working conditions if the employees selected the Union as their collective-bargaining representative and that, during the second conversation, he interrogated Ratola concerning how she was going to vote in the imminent representation election—both acts allegedly violative of Section 8(a)(1) of the Act. Given the state of the record evidence, resolving the credibility of the witnesses is essential to determining the merits of the unfair labor practice allegations, and, in this regard, based upon the testimonial demeanor of each, I found Christina Ratola, who testified involuntarily pursuant to a subpoena, to have been significantly more credible than Richard Angotti. Thus, she impressed me as being a candid and trustworthy witness; while, in contrast, Respondent's owner appeared to be guileful and demonstrated a lack of probity in his responses to questions. In particular, I believe he was disingenuous in asserting that Ratola failed to turn and look at him when he addressed her during their supply room closet encounter. As to this, she did not appear to be an impudent individual, or one who, when addressed by him, would insolently turn her back to the owner of the company, for which she worked. Accordingly, I shall rely upon Ratola's version of events whenever their respective testimony conflicts.[8]

Based on the foregoing and the record as a whole, I find that many of Respondent's voting unit employees were students; that, in order to accommodate their school responsibilities Respondent had been flexible in scheduling such individuals for work; that Angotti had stressed this flexible scheduling during the preelection period, and that Respondent's dispatcher, Jamie Larripa, had also emphasized this policy in a letter to her co-workers, in which she urged them to support Respondent. I further find that, one morning a month before the election, while Ratola was in the supply room closet collecting supplies for her ambulance, Angotti appeared in the closet doorway, mentioned the advent of the Union and began speaking about the employees and management continuing to work out problems as they had in the past in accord with Respondent's open door policy.. Thereupon, he warned that there would be "no more flexible schedules if there was a union." Herein, given Respondent's policy of flexibility in scheduling work assignments for employees, who were students at school, and the emphasis placed upon the issue by Angotti during the preelection campaign, flexible scheduling clearly was a benefit provided to its voting unit employees by Respondent. The Board has continually held that "an employer's preelection statement to employees that, should they choose union representation, they will automatically lose a fringe benefit . . . violates Section 8(a)(1)." *DynCorp*, 343 NLRB No. 124 at slip. op. 3 (2004); *Federated Logistics & Operations*, 340 NLRB 255, 256 (2003); *Hertz Corp*., 316 NLRB 672 at fn. 2 (1995). Counsel for Respondent argues that no violation of the Act should be found as Angotti's threat was isolated or de minimus. However, contrary to counsel, I find that Angotti engaged in almost the identical conduct a week or two after uttering his threat to Ratola when, one morning, he leaned into the rear of the ambulance, which was operated by Paul Corso and Alex Stephenson,[9] and, after mentioning that, because of his flexibility with scheduling, employees were allowed to take tests in school and do other things, said "that, if we voted for a union . . . he wouldn't be able to be as flexible with students like us." Moreover, as will be discussed below, Angotti engaged in another unfair labor practice prior to the representation election. Accordingly, I find that, by threatening employee Ratola with more onerous working conditions, the loss of flexible scheduling, if its employees selected the Union as their collective-bargaining representative, Angotti acted in violation of Section 8(a)(1) of the Act.[10] *Transportation Repair & Service*, 328 NLRB 107, 112 (1999).

Next, I find that, one morning approximately a week before the election, on the day of a company barbeque for its employees, Angotti requested that Ratola accompany him to his office so that they could speak about the Union; that, inside Angotti's office with the door closed, they spoke for between 30 and 45 minutes; that Angotti, who did most of the talking, spoke about two of Respondent's competitors AMR and RELS and compared the possibility of his employees selecting a union to represent them to having his 8-year-old child being kidnapped; and that, at the end of the meeting, he asked Ratola which way she was going to vote. Board law is clear that interrogations of employees are not per se violative of Section 8(a)(1) of the Act but, rather, whether such acts may be unlawful depends upon "whether under all the circumstances, the interrogation rea-

[8] Counsel for Respondent argues that I should credit Angotti because he had participated in two prior NLRB elections and received advice from counsel regarding what he could and could not say to employees. Contrary to counsel, history teaches just the opposite lesson. Thus, the in excess of 340 Board volumes are replete with examples of employers who, for whatever reason, disregard the advice of counsel and engage in violations of the Act when involved in election campaigns.

[9] As between Paul Corso and Richard Angotti, notwithstanding his termination by Respondent and any resulting animosity, the former impressed me as the more credible witness. Thus, in contrast to Angotti, Corso's demeanor was that of a frank and veracious witness, and I rely upon his version of events herein.

[10] I have considered the fact that the complaint alleges that this unfair labor practice occurred in the week prior to the election. While not accurate in that regard, the substance of the allegation is reflected by the evidence. Moreover, Respondent was afforded an opportunity to prepare to rebut the allegation, and Angotti testified as to his version of events. Significantly, while, of course, denying the alleged unfair labor practice, he did recall the incident. Thus, while the complaint may have been erroneous as to the timing of the incident, Respondent was afforded due process in meeting the allegation.

sonably tends to restrain, coerce, or interfere with rights guaranteed by the Act." *Rossmore House*, 269 NLRB 1176, 1177 (1984). Herein, I note that Angotti's questioning of Ratola occurred in the former's office behind closed doors, that Angotti is the owner of Respondent, that there is no record evidence that the employee was an open and avowed supporter of the Union, that Respondent offered no evidence establishing the necessity for Angotti's conduct, and that Angotti offered Ratola no assurances against reprisals for an affirmative answer. Counsel for Respondent again, in defense, asserts the isolated nature of the aforementioned interrogation. However, I have already concluded that Angotti previously had unlawfully threatened Ratola that Respondent would no longer be flexible in scheduling work assignments for employees, who were students, if its employees selected the Union as their collective-bargaining representative. In these circumstances, I find that Angotti's interrogation of Ratola was coercive and violative of Section 8(a)(1) of the Act. *Jefferson Smurfit Corp*., 325 NLRB 280, 285 (1998).

V. THE CHALLENGED BALLOTS

A. Norma DelaFuente and Isis Laland

During the February 11, 2005 representation election, the Board agent challenged the ballots cast by Norma DelaFuente and Isis Laland as neither individual's name appeared on the voter eligibility list. In these regards, the record establishes that DelaFuente worked as an EMT for Respondent and that, on September 8, 2004, she injured her right knee while lifting a patient into her ambulance. Thereafter, according to Frank Lemus, who was uncontroverted, "she was [on] . . . light duty status doing some clerical and some communications center responsibility." Then, in "late November," DelaFuente had a conversation with Lemus during which "she . . . stated to me that she was anticipating having knee surgery in December. And that she was going to be attending the paramedic program at City College of San Francisco, spring semester, which was going to start in February. And then she was going to be applying to the San Francisco Fire Department. . . . She says 'I won't be returning to St. Joseph's.'" Lemus added that DelaFuente performed no work for Respondent after November and that he has not heard from her since the above conversation. During cross-examination, he testified that Respondent had received regular status reports from DelaFuente's doctor until she stopped working for Respondent in November.

As to Isis Laland, Lemus, who was uncontroverted, testified that she worked as an EMT for Respondent through December 2004 and that Laland ceased working because she had been accepted into a paramedic internship program at AMR, which was going to start in January. Lemus further testified that he had a conversation with Laland regarding her future plans on or about December 21 in the communications center,[11] and "she wanted us to no longer have her on the schedule, and she no longer was going to be called for any shifts. She wanted to devote her entire time to the paramedic . . . program at [AMR]." Lemus, who testified he understood Laland as saying she no longer desired to work for Respondent, replied to Laland that, if she wanted to work for Respondent in the future, "she would have to reapply for a position." Laland performed no more work for Respondent after this conversation.[12]

Respondent contends that, in the above circumstances, neither DelaFuente nor Laland was an eligible voter as each had resigned her employment with Respondent prior to the date of the representation election, February 11, 2005. In these regards, Lemus was uncontroverted that DelaFfuente resigned her position with Respondent to enter a college paramedic program and that Laland resigned her position with Respondent to enter the AMR paramedic training program. I find nothing ambiguous in the comments of either employee to Lemus. The Board has long held that "… an employee's actual status as of the eligibility date and the date of the election governs the employee's eligibility to vote, irrespective of what occurs after the election," and, when an employee quits his employment and stops working prior to election day, he is not eligible to vote. *Dakota Fire Protection*, 337 NLRB 92 at 92 (2001); *Columbia Steel Casting Co.*, 288 NLRB 306 at fn. 4 (1988); *Roy N. Lotspeich Publishing Co*., 204 NLRB 517, 518 (1983). Based upon the uncontroverted record evidence, I find that DelaFfuente and Laland each voluntarily resigned her position with Respondent prior to the date of the election and, therefore, neither was an eligible voter. *Orange Blossom Manor*, 324 NLRB 846, 847 (1997). Accordingly, I sustain the Board agent's challenges to their ballots.

B. Jamie Larripa and Jeffrey Leonard

The Union challenged the ballots of Jamie Larripa and Jeffrey Leonard on grounds that neither individual is a voting unit employee. With regard to Larripa, the Union offered the testimony of Christina Ratola, Paul Corso, Alexander Stephenson, and Kendall Williams, each of whom worked for Respondent during the preelection period and at the time of the election but is no longer employed by Respondent. They all testified that Larripa works as Respondent's dispatcher,[13] a position not in the voting unit. According to Stephenson, in performing her duties, "Larripa would sit in the dispatch office and her hours varied. She was usually there in the morning, would take calls for us when we were out in the field. When we were out in the field, we radioed to her. She told us where to go." Corso, who averred that he was friendly with most of the voting unit employees and that "I was pretty well informed about the daily goings-on,"[14] testified that, during the preelection period, he

[11] During cross-examination, Lemus said that, in October, Laland had asked to be placed on "on-call" scheduling basis as she was in a hospital training program.

[12] According to Lemus, this is Respondent's "standard practice" with employees, who leave it to do the AMR paramedic program.

In late March 2005, Angotti gave Lemus a letter, dated March 20, to Angotti from Laland. In the document, the latter made several assertions regarding a conversation with Lemus in February 2005 and employment commitments from him. With regard to the contents of the letter, Lemus denied having any conversations with Laland since December 2004.

[13] According to Paul Corso, Marin County requires company dispatchers to be qualified EMTs.

[14] According to Corso, he would have been told if either Larripa or Leonard was taking shifts on ambulances "because it would have been very unusual for [either one] to work on an ambulance."

personally was not aware of Larripa ever working on an ambulance[15] but, subsequently, was informed she had worked on an ambulance for one shift prior to the election. Likewise, Ratola, who worked three 12-hour shifts per week, testified that she had no recollection of Larripa working on an ambulance prior to January 2005 and never saw her name on a work schedule.[16] She added that, after January, she did see Larripa "one time riding third" on an ambulance—on the day of the company barbeque. During cross-examination, she conceded that employees are sometimes called into work to cover for employees, who are scheduled to work but are sick or otherwise unavailable to work. Stephenson, who began attending school in September 2004 and, as a result, reduced his work shifts to two 12-hour shifts on Thursday and Friday of each week, recalled seeing Larripa working in an ambulance on just two occasions prior to the election. In early December 2004, "I remember vividly going into St. Mary's, and she was riding with a fellow named John Hall and someone else" as the third person on an ambulance crew. Stephenson remembered this incident as "Jamie would talk about how she was going to get out to the field."[17] Also, in "probably around January" 2005, he observed Larripa working in an ambulance, riding with Jeffrey Leonard. Finally, Williams, who stated that he usually only worked a 24-hour shift on Sundays and sometimes as a fill-in, testified that he never observed Larripa, who he knew as a dispatcher, working on an ambulance while he worked for Respondent.

While Larripa, who was on vacation during the week of the hearing, was not called as a witness by Respondent, Frank Lemus testified that she was employed by Respondent as an EMT/dispatcher and that he has assigned her to perform EMT tasks, including "the standard basic life support tasks that every EMT is assigned to while working on board the ambulance." According to him, prior to January 2005, he assigned her to ambulance work "on average, three to four times a month," and, on these occasions, "she would either be scheduled or she would be called to work." Subsequent to January, according to Lemus, she has continued to work on an ambulance team "probably about the same number, three to four times a month." Asked if Larripa ever worked as the third person on an ambulance, he replied, "Not recently. Only when she first started to ride during her two week orientation period." Jeffrey Leonard, Respondent's driver safety or EVOC instructor, testified that, between September 2004 and January 2005, he worked "six or more" 12-hour shifts on an ambulance with Larripa; that, since January, he worked with her "two or three times;" and that, on all these occasions, the two of them performed standard EMT duties. Daniel Hatfield, who, at time of the hearing, had been employed by Respondent for 11 months as an EMT and knows Larripa as a dispatcher and EMT for Respondent, initially testified that he was assigned to perform EMT work on an ambulance with Larripa "a couple of times." Moments later, he changed his testimony, stating, "Actually I didn't mean a couple. I meant that I . . . probably worked with her about maybe five, six times." Then, asked if he meant six times in 11 months, Hatfield answered, "Yes" and defined this as four occasions prior to January 2005 and twice thereafter.

As to Jeffrey Leonard, who is trained as a paramedic, ex-employees Ratola, Corso, Stephenson, and Williams identified him as Respondent's EVOC instructor, which is not a voting unit position. The record reveals that Respondent's emergency vehicle operator course is a state-mandated 10-hour driver safety course taken by every person who drives an ambulance for it, Leonard is the course instructor for Respondent, and he teaches the course usually three times a year or whenever Respondent has a group of six or seven available new hires. While Ratola had no recollection of ever seeing Leonard working as an EMT on an ambulance team for Respondent, Corso, Stephenson, and Williams each recalled observing Leonard working as an EMT on an ambulance on the occasion of the Alcatraz Triathlon in San Francisco in the summer of 2004, and Stephenson recalled a day in January 2005 when he observed Leonard and Larripa working together on an ambulance and "a couple of times" in January or February 2005 when he observed Leonard operating an ambulance for Respondent.

In describing Leonard's job duties, Frank Lemus stated the former is an EMT and "also our EVOC instructor and one of our field training officers." Leonard himself echoed this job description, testifying he is an EMT and "I do drivers training and some marketing at times."[18] Corroborated by Lemus, describing himself as a regular part-time worker, Leonard, who has a full-time 42-hour-per-week job with the Shell Oil Company with a 14 days on and 8 days off schedule, testified that, during September 2004 through January 2005, he performed EMT work on an ambulance crew for Respondent three to four times a month, working mainly 12-hour shifts, and that, since January 2005, he has continued his EMT duties at "about the same rate." As to his work schedule, Leonard stated that sometimes his shifts were scheduled and "sometimes on call. Typically, I call a week before and find out what's available and try and pick shifts that way." Daniel Hatfield testified that, besides Larripa, he also has performed EMT work on an ambulance for Respondent with Leonard "quite a bit." According to Hatfield, he worked with Leonard a total of 10 to 12 times—eight times between September 2004 and January 2005 and "about five" times thereafter.[19] Finally, Respondent failed to offer any documentary evidence, including payroll records, to substantiate its claims regarding Leonard's or Larripa's EMT work on ambulances from September 2004 through the date of the elec-

[15] Corso stated that, in September 2004, Respondent changed his work schedule to two 12-hour shifts per week and conceded that, given his changed work schedule, he was not present at Respondent's facility for 5 days a week.

[16] Ratola was certain of this as "in the morning when everyone is cleaning their ambulance and checking it out, we'd see who was doing their own ambulance."

[17] Stephenson added that, generally, two employees comprised an ambulance team "unless somebody is being trained in the first couple of weeks of your probationary period."

[18] Leonard estimated that he performs drivers' training work "approximately" three times a year" and when asked to evaluate a driver while working as an EMT on an ambulance.

[19] Hatfield was able to recall the number of times he worked with Larripa and Leonard as they were "good partners" and "I always remember good partners that I work with."

tion, February 11, 2005.[20] In this regard, during the hearing, counsel for Respondent merely averred "we don't have the records from that period of time."

Based on the foregoing, the Union contends that neither Larripa nor Leonard worked sufficient hours in the capacity of an EMT to warrant inclusion in the voting unit. At the outset, in determining whether an individual is a regular part-time employee, the Board considers such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of work duties, and similarity of wages, benefits, and other working conditions—in short, whether the individual shares a community of interests with the employees in the voting unit. *Arlington Masonry Supply*, 339 NLRB 817, 819 (2003); *Pat's Blue Ribbons*, 286 NLRB 918 (1987); *Muncie Newspapers*, 246 NLRB 1088, 1089 (1979). Pursuant to *Davison-Paxon Co*., 185 NLRB 21, 24 (1970), "any contingent or extra employee who regularly averages 4 hours or more per week for the last quarter prior to the eligibility date has a sufficient community of interests for inclusion in the unit and may vote in the election." In this regard, based upon the respective testimony of the Union's witnesses Ratola, Corso, Stephenson, and Williams, each of whom impressed me as being a candid and forthright witness, I find that, from September 2004 through January 2005, while Larripa's name may never have appeared on a weekly shift schedule, she apparently did work on an ambulance for Respondent on, at most, two occasions—once, in December 2004, as a third person and once, in January 2005, with Leonard and that Leonard worked on an ambulance at the Alcatraz Triathlon in San Francisco in the summer of 2004, once with Larripa, and on just two other occasions prior to the election. While, based upon the foregoing, one may reasonably conclude that neither Larripa nor Leonard worked enough to be classified as a regular part-time voting unit employee, it is also true that each may have performed work as an EMT at times when the Union's witnesses were unaware of his or her work. However, I specifically credit the testimony of Corso that he "was pretty well informed about the daily going-ons" and would have been told if Larripa and Leonard were taking shifts "because it would have been very unusual for them to work on an ambulance." Moreover, I am hesitant to rely upon the unsubstantiated assertions of Respondent's witnesses as to the significantly greater extent of Larripa's and Leonard's EMT work than attributed to them by the Union's witnesses. Thus, while Lemus and Leonard asserted that, during the period September 2004 through January 2005, the latter and Larripa each worked, on average, three or four 12-hour shifts per month, performing EMT work on its ambulances, I find it telling that Respondent failed to produce any documentary evidence, including payroll records, substantiating the respective testimony of Lemus and Leonard.[21] Moreover, the proffered and asserted corroborative witness, Daniel Hatfield, failed to impress me as being entirely candid. He exhibited a less than certain memory and, in particular, most certainly dissembled as to the number of times he worked on an ambulance with Larripa, initially stating "a couple of times" and later changing his testimony to "maybe five, six times." Further, Hatfield stated that he worked with Leonard eight times between September 2004 and January 2005, and the latter, who never mentioned working at all with Hatfield, asserted he worked with Larripa six times during that four month period. Thus, if one is to believe Respondent's evidence, this shift total (14) for Leonard probably is greater than the number of EMT shifts, which Leonard himself claimed he worked (12 to 16), and, during the above time period, Leonard would have performed EMT work exclusively with Hatfield and Larripa, a rather dubious coincidence to which I find impossible to give credence. In sum, while Leonard and Larripa each undoubtedly performed some EMT work on ambulances for Respondent prior to the February 11 election, I can not be sanguine as to the extent of each individual's EMT work so as to find each was a regular part-time employee prior to the election. Therefore, I rely upon the Union's persuasive evidence that neither Larripa nor Leonard worked the requisite number of hours per week to be considered a regular part-time or eligible voter and sustain its challenges to the ballots of both individuals.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By threatening its employees with more onerous working conditions if they selected the Union as their collective-bargaining representative, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
4. By interrogating its employees regarding how they intended to vote in the NLRB representation election, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.
5. The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in certain serious unfair labor practices, I shall recommend that it be ordered to

[20] At the hearing, counsel for Respondent asserted that Respondent's payroll records would be unavailing as both Leonard and Larripa are paid at the same rate for EMT and non-EMT work. But, assuming counsel's statement is correct, at least as to Leonard, given that his EVOC work for Respondent was sporadic, such records would establish if he worked on other days. Moreover, as to Larripa, there is no record evidence to establish that any EMT work, which she may have performed, was instead of her dispatching work or in addition to such. If the latter, payroll records would certainly establish increased wages for any additional days of work for Larripa.

[21] Contrary to Respondent's counsel, while the Union challenged the ballots of Larripa and Leonard on grounds that neither is a voting unit employee and clearly had a burden of proof in that regard, in addition to rebutting the Union's witnesses as to the extent of EMT work performed by the two individuals, Respondent's counsel asserted the legal position that they were regular part-time employees. In these circumstances, Respondent certainly understood the necessity to offer payroll records, which, I believe, may have been conclusive, as corroborative evidence for its own witnesses' assertions, and its failure to do so is rather forcible. Absent such evidence, and noting that neither Lemus nor Leonard was as persuasive as the witnesses, who testified on behalf of the Union, I place no reliance upon the assertions of each regarding the amount of ambulance work performed by either Larripa or Leonard.

cease and desist from engaging in such conduct and to take certain affirmative actions, including the posting of a notice to its employees, designed to effectuate the purposes and policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Angotti Healthcare Systems, Inc., d/b/a St. Joseph Ambulance Service, San Rafael, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with more onerous working conditions if its employees selected the Union as their collective-bargaining representative;

(b) Interrogating its employees as to how they intended to vote in the NLRB representation election;

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in San Raphael, California copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 11, 2005

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that, in Case 20–RC–18009, the challenges to the ballots of Norma DelaFuente, Isis Laland, Jamie Larripa, and Jeffrey Leonard be sustained and their ballots not be opened or counted. Inasmuch as the tally of ballots showed that a majority of the valid votes cast were cast in favor of the Union, the Region should issue a Certification of Representative.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT threaten you with more onerous working conditions if you select International Association of EMTS and Paramedics, SEIO–NAGE, AFL–CIO (the Union), as your collective-bargaining representative

WE WILL NOT interrogate you as to how you intend to vote in the NLRB representation election

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ANGOTTI HEALTHCARE SYSTEMS, INC., D/B/A
ST. JOSEPH AMBULANCE SERVICE

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."